IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

D.B. Civil Special Appeal No. 42/2001

The Oriental Insurance Co. Ltd. Vs. Smt. Mani & Ors.

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D.B. Civil Special Appeal No. 51/2001

The Oriental Insurance Co. Ltd. Vs. Smt. Sabudi & Ors.

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D.B. Civil Special Appeal No. 41/2001

The Oriental Insurance Co. Ltd. Vs. Gopal & Ors.

Date of order :: July 11, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI.
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Tripurari Sharma for the appellant
None present for the respondents

(ORAL, Per Hon'ble Gandhi, J.)

1. These special appeals have been preferred under Section 18 of the High Court Ordinance, 1949 challenging the order dated 20.02.2001 passed by the learned Single Judge in appeals arising out of a common award dated 22.05.2000 passed by the Motor

Accident Claims Tribunal (for short, MACT) in claim cases No. 322/1996, 323/1996 and 332/1996.

2. The accident took place on 31.08.1996 at about 2.00 p.m. while deceased Pura, Smt. Sabudi, Indra Singh and Gopal were sitting in a tractor trolley and the vehicle was being plied on National Highway No. 8 Near Panchayat Samiti, Jawaja. The driver of the tractor drove it in rash and negligent manner, due to which the wheel of the trolley came out causing accident. Pura died on spot, while Sabudi, Indra Singh and Gopal sustained injuries. Claim petitions were filed by the claimants of the deceased Pura and the injured Sabudi and Gopal. The respondents filed their replies and on appreciation of the evidence learned MACT awarded compensation to the tune of Rs. 1,50,000/- in claim case No. 322/1996, Rs. 15,000/- in claim case No. 323/1996 and Rs. 50,000/- in claim case No. 332/1996 vide a common award dated 22.05.2000.

3. Against the said common award, appeals were preferred by the Insurance Company on the ground that the MACT has recorded the finding that the driver was not holding a valid driving licence at the time of accident and despite that the MACT fastening liability to indemnify the award on the Insurance Company, is unjustified and erroneous. The learned Single Judge

relying upon various judgments of the Apex Court delivered in case title *United India Insurance Co. Vs. Gian Chand & Ors.* reported in 1998 (1) TAC 36 (SC), *Skandia Insurance Company Vs. Kokilaben Chandravadan* reported in (1987) 2 SCC 654, *Sohan Lal Passi Vs. P. Sesh Reddy* reported in 1996 (2) TAC 733 (SC), *Smt. Ratna Ganguly Vs. Ranjeet Kumar Ganguli* reported in 1987 (1) RLR 493, *Bheru Vs. Nand Ram* reported in 1980 ACJ 513 and *New India Assurance Co. Vs. Sushila Devi* reported in 1981 ACJ 119 came to the conclusion that the Insurance Company has not discharged the burden of proving the fact of holding of the valid driving licence by the driver at the time of accident and dismissed the appeals.

4. Aggrieved of the order of the MACT and the learned Single Judge, these appeals have been preferred on the similar grounds as set out in the memo of first appeals that the driver was not having the valid licence at the time of driving the vehicle causing accident, which amounts to violation of the condition of the policy, therefore, the Insurance Company was not liable to indemnify the award.

5. Heard learned counsel for the appellant and perused the record. Learned counsel for the driver, owner and the claimants is not present. These appeals were taken up for hearing

yesterday also and could not be disposed of as the learned counsel for the respondents was not present and the appeals were directed to be listed for final hearing today.

6. Learned counsel for the appellant has reiterated his submissions as set out in the memo of appeal with regard to holding of valid and effective licence by the driver. The MACT, on scrutiny of the evidence, has recorded the findings that the Insurance Company has proved that the driver at the time of accident was not having valid licence, therefore, it is violation of the condition of policy. We have seen from the record that a finding is recorded by the MACT in para 11 of the award that DW1 Madan Singh, witness of the respondents has proved the fact that the driver was not having valid driving licence, and that he was confronted with the driving licence. We have perused the statement of DW1, this piece of evidence has not been recorded therein, therefore, this finding is perverse being based on no evidence to that extent. But there is other evidence also on record which has proved that the driver was not having valid licence.

7. On appreciation of the evidence, the learned Single Judge has also held that

> *"The Insurance Company with the help of the statement of Madan Lal, could only establish before the*

Tribunal that driver Misru at the time of accident was not holding the driving licence."

The learned Single Judge further observed violation of the policy condition. Once it is proved that the driver was not holding valid driving licence at the time of accident, it goes to show that the tractor was permitted to be driven by the owner and the driver caused the accident. The respondent No. 2, owner, has also filed the written statement, but he has not appeared in the witness box to prove that the vehicle was not handed over willfully by him to the driver. It was for him to prove this fact. If it is not proved while opportunity was available to him, inference can be drawn that vehicle was given to the driver illegally unless otherwise proved, the finding recorded by the MACT is justified that the driver was not holding the valid licence and the driver was permitted by the owner to ply the vehicle.

8. In such circumstances, where it is proved that the driver was not having valid licence and the owner has not come into the witness box to prove that the tractor was not handed over to the driver willfully, the violation of the policy condition stood established and the owner and the driver of the vehicle are vicariously liable. However, in such a situation the Insurance Company has to indemnify the award and the right of recovery is granted to the Insurance Company as held by the Supreme Court

in the case of *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.* reported in (2004) 3 SCC 297. In para 108 of the said judgment, the Apex Court held as under :-

> *"108. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.*

9. For the aforesaid reasons, we hold that the Insurance Company is liable to indemnify the award and under such circumstances, is entitled to recover the award amount from the driver and the owner. The appeal is accordingly allowed to that extent. Other findings are not disturbed.

(Dr.VINEET KOTHARI),J. **(R.C. GANDHI),J.**

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